IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Crl.MC.No. 3727 of 2007

(C.C. NO. 43/2007 OF JUDICIAL MAGISTRATE OF 1ST CLASS NO.II, KOCHI)

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PETITIONERS:

1. **AJEEB @ KRISHNAN, S/O. DR. SIVASANKARAN, AGED 30 YEARS, RESIDING AT VATTEKKATTU HOUSE, GURUVAYOOR VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

2. **DR. SIVASANKARAN @ SIVAN, S/O. KRISHNAN, AGED 59 YEARS, RESIDING AT VATTEKKATTU HOUSE, GURUVAYOOR VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

3. **REETA SIVASANKARAN, S/O. DR. SIVASANKARAN, AGED 57 YEARS, RESIDING AT VATTEKKATTU HOUSE, GURUVAYOOR VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.P.V.CHANDRA MOHAN.

RESPONDENTS:

1. **RASHMI, D/O. SIDDHARTHAN, AGED 30 YEARS, EAREZHATHU HOUSE, PANAYAPPILLY, COCHIN-5.**

2. **STATE OF KERALA, REPRESENTED BY S.I. OF POLICE, THOPPUMPADY POLICE STATION, KOCHI.**

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3727 of 2007

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Dated this the 13th day of December, 2007

O R D E R

The petitioners are the husband, father-in-law and mother-in-law of the defacto complainant. They face indictment in a prosecution for the offence punishable under Section 498A r/w. 34 I.P.C. Cognizance has already been taken. The matter is pending before the learned Magistrate as a calender case. The first accused has not entered appearance. Accused 2 and 3 have already entered appearance.

2. During the pendency of the proceedings the parties have settled their disputes amicably. The first respondent/defacto complainant has compounded the offence under Section 498A I.P.C. allegedly committed by the petitioners. The petitioners, along with the first respondent, have come before this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against all the three petitioners. It is submitted that though the first respondent has not entered

appearance, no proceedings under Section 446 Cr.P.C. is initiated against him he having not been arrested at the crime stage also.

2. I am satisfied, from the averments made in the Crl.M.C, the affidavit filed by the first respondent (Annex.III) and the settlement deed (Annex.II) filed in the case as also the submissions made by the counsel at the Bar, that the parties have settled their disputes and the first respondent has compounded the offence under Section 498A I.P.C. alleged against the petitioners. If legally permissible, I am satisfied that the composition can be accepted and the proceedings can be brought to premature termination.

3. The offence under Section 498A I.P.C. is not legally compoundable and the composition cannot be accepted under Section 320 Cr.P.C. But the learned counsel for the petitioners relies on the decision in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386). The said decision is authority for the proposition that at times the interests of justice may transcend the interests of mere law and in such circumstances the provisions of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweeping powers of the Court under Section 482 Cr.P.C. to act in aid of justice. I am

satisfied that this is an eminently fit case where the powers under Section 482 Cr.P.C. with the help of the dictum in **B.S. Joshi** can be invoked and the proceedings against the petitioners brought to premature termination as the parties have now put an end to the marital tie and are residing separately.

4. This Crl.M.C. is hence allowed. The prosecution initiated against the petitioners, in which cognizance was taken as C.C. No. 43 of 2005 under Section 498A I.P.C. is hereby quashed.

(R. BASANT)
Judge

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